

**File No: PA 12-04 Very Low Density Residential Text Amendment**

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**Proposal:** The applicant proposes to amend the § 16.12 Residential Uses section of the Sherwood Zoning and Development Code, (SZDC), specifically the § 16.12.020 Very Low Density Residential Zone. The proposed changes are attached as Exhibit A. The applicant's materials are attached as Exhibit B.

**I. BACKGROUND**

- A. Applicant: John Satterberg/Community Financial  
P.O. Box 1969  
Lake Oswego, OR 97035
- B. Applicant's Representative: Kirsten Vanloo, Emerio Design
- C. Location: The proposed amendment is to the text of the development code and specifically applies to the properties zoned Very Low Density Residential (VLDR).
- C. Review Type: The proposed text amendment requires a Type V review, which involves public hearings before the Planning Commission and City Council. The Planning Commission will make a recommendation to the City Council who will make the final decision. Any appeal of the City Council decision would go directly to the Land Use Board of Appeals.
- D. Public Notice and Hearing: Notice of the January 8, 2013 Planning Commission hearing on the proposed amendment was published in *The Gazette* on January 1, 2013 and *The Times* on December 20, 2012. Staff posted notice in five public locations around town and on the web site on December 19, 2012. Regular updates were provided in the City newsletter.

While this does not apply citywide, it may affect the value of property located within the very low density residential zone; therefore Measure 56 notice was sent on December 19, 2012 informing property owners within that zoning designation. DLCD notice was provided on December 4, 2012.

- E. Review Criteria:  
The required findings for the Plan Amendment are identified in Section 16.80.030 of the Sherwood Zoning and Community Development Code (SZCDC). Applicable Statewide Planning Goals: Goal 1 Citizen Involvement, Goal 2 Land Use Planning, Goal 5 Natural Resources, Scenic and Historic Areas and Open Space, and Goal 12 Transportation.

- F. Background:

The area east of SW Murdock Road is zoned very low density residential, (VLDR). The VLDR zoning district provides for low density, larger lot single-family housing and other related uses in natural resource and environmentally sensitive areas warranting preservation, but otherwise deemed suitable for limited development, with a density of 0.7 to 1 dwelling unit per acre. If developed through the Planned Unit Development (PUD) process, and if all floodplain, wetlands, and other natural resource areas are dedicated or remain in common open space, the permitted density of 1.4 to two (2) dwelling units per acre may be allowed.

There are two existing planned unit developments within this VLDR zoning designation: Fair Oaks, and Sherwood View Estates. The remaining properties, approximately fifty-five acres, consist of 11 parcels zoned VLDR and nine single-family homes. The area includes a 2.25-acre wetland located in the southeast corner of the site with standing water most of the year. Areas are included in Metro's natural resource Goal 5 inventory including Class A wildlife habitat, with groves of woodland habitat and mature trees.

Several challenges exist for site design including the Tonquin Scablands, a rocky terrain sculpted from ancient glacial flooding. There are two high points: one point in the center of the area and one in the southern portion of the site with sloping terrain in between. This results in challenges to the street and pedestrian circulation network and added costs to develop and design.

Another challenge to the area is due to the presence of soil contamination identified by the Department of Environmental Quality (DEQ). A 40-acre portion of the VLDR site area, and the majority of the area available for development, was part of the "Ken Foster Farm" site. Portions of the Ken Foster Farm site had been used for discarding animal hides and carcasses that were remnants from the local tannery operation in the city. As part of the Department of Environmental Quality (DEQ) investigation of the Tannery site located on SW Oregon Street, it was discovered that the soil on the Ken Foster Farm site was also contaminated. The property to the northeast of the undeveloped area, Ironwood Subdivision, was in development when the issue arose which required significant soil removal and oversight from the Department of Environmental Quality (DEQ).

DEQ entered the Ken Foster Farm site into the Environmental Cleanup Site Information Database in 2000, and completed a Preliminary Assessment (PA) in 2004. The assessment was funded by cooperative grant funds from the Environmental Protection Agency (EPA) Region 10. (DEQ Technical Memorandum) The results of the soil sampling completed for this site listed concentrations of antimony, chromium, lead and mercury above expected background concentrations. In addition, sediment samples from the wetland areas on the site were found to contain elevated concentrations of chromium copper, mercury and zinc. According to the report, they found that the human health risk were relatively low based upon the soil samples from the EPA Impervious Area results and data from property-owner site investigations on two of the properties within the former Farm acreage. Valid soil sample tests of the subject site indicate that hexavalent chromium was not present in soils and that the prevalent form of chromium in soils is trivalent chromium. The other concentrations did not present an unacceptable human health risk on an individual contaminant basis. The DEQ concluded that the chance of significant exposure to residents living around these areas is low under current conditions.

In 2005, the City received a grant to develop the Southeast Sherwood Master Plan (Exhibit C), a master plan for the area to serve as a guide to coordinating the potential separate land use actions and infrastructure investments of property owners, developers, and the City in order to create a cohesive, livable neighborhood that could develop over time. The SE Sherwood Master Plan was prepared with the input of property owners, developers, neighbors and City representatives. Three open houses were held in order to develop a preferred alternative for development of this area. The purpose was to identify a more efficient way to develop the area and to try to get property owners in the area to work collaboratively when considering developments. The plan did not result in amendments to the Comprehensive Plan or Zoning map but was accepted by the Planning Commission via Resolution 2006-01(Exhibit D).

The recommended master plan was a hybrid of several alternatives that were developed through the open house workshops. Through the planning phase, the developers emphasized the need for providing sufficient density to pay for the necessary infrastructure while the citizens emphasized a preference for larger lots to preserve the wildlife habitat. This resulted in the development of a hybrid plan that provided for a mix of lot sizes with a range of increased density in the center of the

plan area to 15,000 square foot lot sizes abutting the southern portion of the site. The gross density, under the preferred option would be 2.2 units per gross acre and net density of 4.43 units per acre.

The Planning Commission, via resolution, approved the SE Sherwood Master Plan in concept in 2006. Although not formally adopted and incorporated into the Comprehensive Plan nor adopted by the City Council, it does provide guidance for development and the intention of the community and surrounding property owners for the area. The applicant's proposal applies some of the recommendations for development as adopted by the resolution to the SZDC regarding the density requirements and proposes a minimum lot size to achieve the resulting net density if developed through a planned unit development process.

The applicant, the property owner of tax lot 2S133CB01000, just north of the Sherwood View Estates had previously applied for a Planned Unit Development in 2011 for an eight-lot subdivision (Denali PUD 2011-01) consistent with the density identified in the SE Sherwood Master Plan. However, because the SE Sherwood Master Plan had not been implemented and thus the proposed density not permitted, the City Council approved via Ordinance 2012-004, a six-lot subdivision and Planned Unit Development.

The applicant has not submitted a final development plan for the planned unit development and elected to pursue a text amendment in order to achieve the greater density that was developed under the SE Sherwood Master Plan.

## II. AFFECTED AGENCY, PUBLIC NOTICE, AND PUBLIC COMMENTS

### Agencies:

The City sent request for comments to the standard agency notification list on December 5, 2012. The City received one comment as discussed below. The City has received either no response or no comment on the proposal from the other agencies.

Engineering Department: After review of the proposal, the proposed amendment will not have a significant impact on the infrastructure and services are available to accommodate this increased density.

### Public:

**Kurt Kristensen 22520 SW Fairoaks Ct. Sherwood, OR 97140** submitted comments via email are attached as **Exhibit E**.

Mr. Kristensen is opposed to the text amendment as written as it does not incorporate the entire SE Sherwood Master Plan and believes some of the elements of the plan may not be implemented if the Planning Commission recommends adoption of the text amendment as proposed by the applicant. He requests that the Planning Commission recommend to Council the adoption of the SE Sherwood Master Plan so it can be implemented in its entirety. Mr. Kristensen is also concerned about the environmental impacts that the entire site area presents and wants a comprehensive approach taken for remediation of the area.

**Response:** Not all of the recommendations within SE Sherwood Master Plan are incorporated with this proposed text amendment. The text amendment standards will apply only to properties developed as a planned unit development. This gives the Planning Commission and City Council another level of review where they could impose the unique conditions that would not be available to them if developed as a standard subdivision or partition, such as the open space areas and pedestrian connections that are part of the SE Sherwood Master Plan. They could incorporate the elements of the SE Sherwood Master Plan within each proposed development so long as the standards are not contrary to the Code.

The density standards and minimum lot size developed under the SE Sherwood Master Plan were not compatible with existing VLDR PUD standards and therefore the applicant submitted this proposal.

The particular text amendment provisions are not contrary to the SE Sherwood Master Plan as a whole. The Commission could elect to reference the purpose and intent of the SE Sherwood Master Plan within the purpose of the Planned Unit Development Code section itself for properties within the VLDR zone. Additionally, the Planning Commission could chose to move the actual master plan document forward to Council as a separate action later. This text amendment does not prohibit this.

No other comments have been received as of the date of this staff report.

### III. REQUIRED FINDINGS FOR A PLAN TEXT AMENDMENT

The applicable Plan Text Amendment review criteria are 16.80.030.1 and 3.

#### 16.80.030.1 - Text Amendment Review

**An amendment to the text of the Comprehensive Plan shall be based upon the need for such an amendment as identified by the Council or the Commission. Such an amendment shall be consistent with the intent of the Comprehensive Plan, and with all other provisions of the Plan and Code, and with any applicable State or City statutes and regulations.**

##### Need Identified:

The applicant identified that the need for the proposed text amendment is found within in the Planning Commission Resolution 2006-01. The Planning Commission resolution accepted the SE Sherwood Master Plan report and approved the process to implement the plan. The Resolution advised that the Planning Commission would consider development proposals that are consistent with the principals and goals listed in the master plan. Alternative B/C from the master plan became the recommended layout with a net density of 4.43 units per buildable acre. Although not formally adopted or incorporated into the Comprehensive Plan or adopted by the City Council, the plan provides guidance for development and the intention of the community and surrounding property owners for the area. Had the Council formally adopted the master plan, the next step would have required amendments to the SZDC regarding the density requirements in this particular zone be adopted. This is because the density shown in the master plan is higher than the existing special density allowance of two units per acre currently allowed in the VLDR zone under the PUD standards.

The Planning Commission did not forward a recommendation of adoption of the master plan to the Council or forward the specific changes to the density, minimum lot size or changes to the minimum parcel size to develop a planned unit development now proposed. Nor were any of the Code amendments outlined in the plan adopted by the Council. The Commission resolved that they would review applications applying the standards developed through the master planning process when approached by the private property owners in the affected area. (Exhibit D).

Because the Planning Commission adopted the resolution accepting the master plan and the need for the master planning effort itself, the Planning Commission could find that the there is an identified need for the amendment as the applicant proposes. The Planning Commission may review the proposed changes to the Code to determine if it does indeed achieve the outcomes sought for the SE Sherwood Master Plan. Should the Planning Commission find that the need for the amendment is satisfied, staff would recommend the following finding.

**RECOMMENDED FINDING:** Based on the above discussion, the need for the proposed amendments is satisfied as it supports the intention and purpose of the SE Sherwood Master Plan for the density, minimum lot size, and minimum area of the parcels available to when developing a planned unit development.

##### Comprehensive Plan:

*Chapter 3. Growth Management*

*Policy 1: To adopt and implement a growth management policy, which will accommodate growth consistent with growth limits, desired population densities, land carrying capacity, environmental quality and livability.*

The property is located within the City limits and within the urban growth boundary. Most of the VLDR area that would be affected by the implementation of the code changes has not been partitioned or fully developed and the density is well below the one dwelling unit per acre minimum. Several of the properties do not currently have urban facilities such as adequate roadways, water, sanitary sewer and pedestrian connections. Development could improve the level of services occurring in this area and would provide improved connection and infrastructure within our City boundaries. Additionally, the properties will have direct access to SW Murdock Road, an arterial.

The applicant proposes a maximum density of four units per acre and a minimum lot size of 8,000 square feet if developed as a planned unit development. Planned unit developments are only allowed in this zone if it can be demonstrated that the natural areas can be preserved. Each applicant within this zone will have to comply with this standard when applying for a PUD. This is consistent with the policy.

**FINDING:** Based on the above discussion, the proposed text amendment is consistent with the growth management policy objective.

#### *Chapter 4. Land Use*

*Policy 6 The City will create, designate and administer five residential zones specifying the purpose and standards of each consistent with the need for a balance in housing densities, styles, prices and tenures.*

#### *Very Low Density Residential Minimum Site Standards:*

*1 DU/Acre, 1 acre minimum lot size*

*This designation is intended to provide for single-family homes on larger lots and in PUD's in the following general areas:*

*Where natural features such as topography, soil conditions or natural hazards make development to higher densities undesirable. This zone is appropriate for the Tonquin Scabland Natural Area.*

*Along the fringe of expanding urban development where the transition from rural to urban densities is occurring.*

*Where a full range of urban services may not be available but where a minimum of urban sewer and water service is available or can be provided in conjunction with urban development.*

The applicant identified several changes to the Planned Unit Development (PUD) standards within the VLDR zone. The minimum lot size is still considered a large lot for an urbanized area as it will remain the largest minimum lot size in the City even if developed as a PUD. The zone is located on the fringe of the urbanized area and compatible with the surrounding properties already developed as planned unit developments under the VLDR standards to the north and south of the subject area as the larger lots will still contain single-family dwelling units.

**FINDING:** Based on the above discussion, the proposed amendments are consistent with the land use policy objective.

#### Consistency with Statewide Planning Goals

##### Goal 1- "Citizen Involvement"

The purpose statement of Goal 1 is "to develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process."

The proposed code changes do not include changes to the City's citizen involvement program, which complies with Goal 1; however, the process to develop the proposed changes was fully compliant with this

Goal. The City provided notice to property owners zoned VLDR, published notice in the paper and posted notice around the City.

In 2005, over 120 people participated and provided input through the various open houses in the SE Sherwood Master Plan process to develop the recommended plan. There were multiple work sessions with the Planning Commission and two public hearings were held on March 28 and April 4, 2006 to provide the public an opportunity to be heard.

#### Goal 2- "Land Use Planning"

The purpose statement of Goal 2 is "to establish a land use planning process and policy framework as a basis for all decision and actions related to use of land and to ensure an adequate factual base for such decisions and actions".

The proposed code changes affect the land use process when utilizing the planned unit development standards. The City's land use planning process and policy framework, which are in compliance with Goal 2, will not change as result of this action.

**FINDING:** As discussed above in the analysis, the applicant identified a need for the proposed amendments to reflect the Planning Commission resolution regarding the SE Sherwood Master Plan and the density, lot size and amendments with a planned unit development. The amendments are consistent with the Comprehensive Plan and applicable City, regional, and State regulations and policies.

#### **16.80.030.2 – Transportation Planning Rule Consistency**

**A. Review of plan and text amendment applications for effect on transportation facilities. Proposals shall be reviewed to determine whether it significantly affects a transportation facility, in accordance with OAR 660-12-0060 (the TPR). Review is required when a development application includes a proposed amendment to the Comprehensive Plan or changes to land use regulations.**

The transportation analysis conducted during the SE Sherwood Master Plan process concluded that the street system could accommodate an increased density to levels proposed by the applicant. The analysis considered the trip generation increases for net densities ranging from 3.35 to 5.03 units per acre.

**FINDING:** The amendments will not result in a change of uses otherwise permitted and will not have a significant impact on the amount of traffic on the transportation system; therefore, this policy is not applicable to the proposed amendment. In addition, any development proposal will be required to conduct a traffic analysis and mitigation, if needed, will likely be a condition of the land use approval.

#### **IV. RECOMMENDATION**

Based on the above findings of fact, and the conclusion of law based on the applicable criteria, staff recommends Planning Commission forward a recommendation to the City Council. Because the decision is based on public policy and finding whether these amendments achieve the outcomes sought during the SE Sherwood Master Planning efforts, and not a technical decision, staff takes no position on the merit of the proposed amendments.

#### **V. EXHIBITS**

- A. Proposed development code changes--with "track changes" submitted by the applicant
- B. Applicant's materials submitted on October 16, 2012
- C. SE Sherwood Master Plan dated February 26, 2006
- D. Planning Commission Resolution 2006-01 dated, May 9, 2006
- E. Comments from Kurt Kristensen, submitted via email on December 26, 2012